

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 3:07-cr-0027-RLY-CMM
)	
TROY OGBURN,)	- 01
)	
Defendant.)	

REPORT AND RECOMMENDATION

On October 26, 2017 and October 30, 2017, the Court held hearings on the Petition for Warrant or Summons for Offender Under Supervision filed on October 18, 2017. Defendant appeared in person with his appointed counsel Joseph Cleary. The government appeared by Barry Glickman, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Jason Nutter.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Ogburn of his rights and provided him with a copy of the petition. Defendant Ogburn orally waived his right to a preliminary hearing.
2. After being placed under oath, Defendant Ogburn admitted violations 1, 2, and 3.
[Docket No. 41.]
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

**Violation
Number**

Nature of Noncompliance

- 1 **“The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substances, except as prescribed by a physician.”**

On August 4, 2017, the offender submitted a urinalysis which tested positive for cocaine.

- 2 **“The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substances, except as prescribed by a physician.”**

On July 12, 26, August 4, 28, September 11, 29, and October 1, 2017, the offender submitted urinalyses which tested positive for marijuana.

- 3 **“The defendant shall participate in a program of testing for substance abuse to include no more than eight drug tests per month and shall pay a portion of the fees of testing.”**

The offender tampered with a drug screen on August 17, 2017. The offender failed to appear to urinalyses on September 27, October 5, and October 12, 2017.

4. The parties stipulated that:

- (a) The highest grade of violation is a Grade B violation.
- (b) Defendant’s criminal history category is V.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 18 to 24 months’ imprisonment.

5. Parties jointly recommended a sentence of eighteen (18) months with no supervised release to follow. Defendant requested a recommendation of placement at a facility close to Evansville, Indiana.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the petition, that his supervised release should be revoked, and that he should be sentenced to the custody of the

Attorney General or his designee for a period of eighteen (18) months with no supervised release to follow. The Defendant is to be taken into custody immediately pending the District Judge's action on this Report and Recommendation. The Court will make a recommendation of placement at a facility closest to Evansville, Indiana.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties have fourteen days after being served a copy of this Report and Recommendation to serve and file written objections with the District Judge.

Dated: 10/31/2017

/s/ Magistrate Judge David E. Jones, sitting by designation

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